

REMARKS

Claims 1, 3, 4, 8-10 and 12 have been rejected under 35 U.S.C. § 103(a) in view of various references. Also, the Examiner has indicated that claims 2 and 11 contain allowable subject matter.

By this Amendment, Applicant has canceled claims 1, 8, 9, 10 and 12, without prejudice or disclaimer, rewrote claims 2 and 11 into independent form, and amended the dependency of claim 3 so that it solely depends upon claim 2. **Accordingly, Applicant submits that claims 2-4 and 11 are now in condition for allowance, and such action is respectfully requested.**

Also, although Applicant has canceled the rejected claims, without prejudice or disclaimer, Applicant notes the following. On pages 2 and 3 of the present Office Action, the Examiner maintains that it is not necessary that a “prima facie case” of unpatentability exist in order for a “substantial new question of patentability” to be present for a claim. Applicant is unsure as to why the Examiner made such a statement since the presence or absence of “a substantial new question of patentability” determines whether or not a **reexamination** is ordered, i.e., the substantial new question of patentability relates to reexamination proceedings. Similarly, the case cited by the Examiner, i.e., *In re Etter*, relates to determining whether or not a substantial new question of patentability existed in order for reexamination to be properly invoked. The case law quote referred to by the Examiner is cited in MPEP §2242. Such section discusses the determination of whether or not a reexamination should be ordered. The section of the MPEP basically states that in order to “order” a reexamination, the proffered “request” must

Amendment under 37 C.F.R. § 1.116
U.S. Application No. 09/697,492

simply pose a substantial new question of patentability. The "request" does not need to rise to the level of a "prima facie" case of obviousness in order for a reexamination proceeding to be ordered.

Since the Applicant is not currently at a stage where a reexamination proceeding is requested to be ordered, the Examiner's statements appear out of context, and unrelated to the current proceedings. Nevertheless, as set forth above, the currently rejected claims have been canceled, without prejudice or disclaimer, and therefore, the rejection of such claims is now moot.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

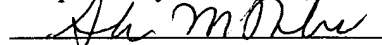
SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Respectfully submitted,



Allison M. Tulino

Registration No. 48,294

Date: March 9, 2006